

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GERALD GRIFFIN,	)	Case No. DISM-03-0031
	)	
Appellant,	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW AND ORDER OF THE BOARD
v.	)	
	)	
DEPARTMENT OF SOCIAL AND HEALTH	)	
SERVICES,	)	
	)	
Respondent.	)	

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**I. INTRODUCTION**

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held in the Evergreen Conference Room at the Office of the Attorney General in Spokane, Washington, on April 15, April 16, and June 17, 2004. BUSSE NUTLEY, Member, listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.

1.2 **Appearances.** Appellant Gerald Griffin was present and was represented by Christopher Coker, Attorney at Law, of Parr, Younglove, Lyman & Coker, P.L.L.C. Patricia Thompson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct, and willful violation of the published employing agency or Department of

1 Personnel rules or regulations. Respondent alleges that Appellant psychologically (verbally) and  
2 physically abused a patient.

## 3 4 **II. FINDINGS OF FACT**

5 2.1 Appellant was a permanent employee for Respondent Department of Social and Health  
6 Services (DSHS). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the  
7 rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the  
8 Personnel Appeals Board on March 31, 2003.

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10 2.2 Appellant was a Mental Health Licensed Practical Nurse 3 at Eastern State Hospital.  
11 Appellant began working at Eastern State Hospital in 1985. Appellant has been the subject of prior  
12 formal disciplinary action and has a history of prior counseling and letters of reprimand.  
13 Appellant's personnel file includes the following:

- 14  
15 • Effective April 1, 2001, Appellant was demoted from his position as Mental Health  
16 Licensed Practical Nurse 4 to Mental Health Licensed Practical Nurse 2 for failing to act in  
17 a professional manner when he spoke to a co-worker in a loud, intimidating voice and  
18 directed profanity at her. Following a hearing, the Board modified the disciplinary sanction  
19 to a position as Mental Health Licensed Practical Nurse 3. Griffin v. Dep't. of Social and  
20 Health Services, PAB Case No. DISM-01-0012 (2003).
- 21 • A January 3, 2001 letter of reprimand for his continued pattern of tardiness and inadequate  
22 notice of reporting to work, in violation of Eastern State Hospital's Nursing Procedure.
- 23 • A January 14, 1997 letter notifying Appellant of his reduction in salary for three months for  
24 failing to provide medical verification after an unscheduled absence.
- 25 • A May 19, 1996 letter of reprimand for excessive use of unscheduled leave.
- 26 • A March 8, 1995 letter of counseling for Appellant's use of unscheduled sick time.
- A July 19, 1988 letter demoting Appellant from Mental Health Technician 4 to Mental  
Health Technician 2 for sleeping while on duty.

1 2.3 By letter dated March 13, 2003, Harold Wilson, Chief Executive Officer, informed  
2 Appellant of his dismissal effective March 31, 2003. Mr. Wilson charged Appellant with neglect of  
3 duty, gross misconduct, and willful violation of the published employing agency or Department of  
4 Personnel rules or regulations. Mr. Wilson alleged that Appellant psychologically (verbally) and  
5 physically abused patient Amanda M. at approximately 8:00 p.m. on June 27, 2002. Mr. Wilson  
6 wrote:

7 First, you yelled at Amanda M. that she was going to "timeout" and, then, you  
8 grabbed Amanda M. by the left arm and shoulder, jerking her from her bed and  
9 onto the bedroom floor, using more force than was necessary. When she became  
10 combative at your rough handling, you continued your restraining of Amanda M.  
11 with the assistance of Glee Shusko (MHT 1) and Carolyn Brown (MHT1) while  
12 calling for additional assistance.

13 2.4 The events for which Appellant was dismissed are in dispute and several different versions  
14 of the events have been presented to the Board. One version is presented by Mental Health  
15 Technician (MHT) Carolyn Brown, MHT Glee Shusko and Appellant; one version was presented  
16 by the patient, Amanda, and one version by Registered Nurse (RN) 3 Nikki Angelo.

17 2.5 On June 27, 2002, at approximately 8 p.m. Appellant and MHT 1 Glee Shusko were  
18 working on Ward 3 North 1 serving snacks. Nikki Angelo, the RN 3, was shift supervisor for the  
19 ward.

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21 2.6 MHT 1 Carolyn Brown was working with resident Amanda. There is no dispute that on  
22 June 27, Amanda was agitated and upset because she had received bad news. Further, there is no  
23 dispute that Amanda had a history of aggressive and violent behavior.

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25 2.7 Carolyn Brown testified she had directed Amanda to take off her headphones when Amanda  
26 took a swing at her. Ms. Brown testified she immediately went to the snack room where other staff

1 was present, including Appellant, Glee Shusko and Ms. Angelo. Ms. Brown told staff that Amanda  
2 had just taken a swing at her and she testified that she told Ms. Angelo, "I think you need to come  
3 assess her." Ms. Brown testified that she, Appellant and Ms. Shusko proceeded to Amanda's room.  
4 When they arrived and entered, Amanda was lying on her bed.

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6 2.8 Ms. Brown also credibly testified that she was "watching Jerry," because Ms. Angelo had  
7 previously informed her that Appellant was too rough with patients.

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9 2.9 Ms. Shusko also testified that Ms. Angelo was present when Ms. Brown informed them that  
10 Amanda had attempted to strike at her. Ms. Shusko testified that she and Appellant followed Ms.  
11 Brown and that Ms. Angelo followed them.

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13 2.10 When they entered Amanda's bedroom, she was still wearing her headphones, and staff  
14 could hear the music come through the headphones. Ms. Angelo remained at the doorway,  
15 observing what was occurring.

16  
17 2.11 Amanda was singing loudly and she was visibly agitated. Appellant told Amanda to take off  
18 the headphones, and he explained that she was being placed on timeout. Both Ms. Shusko and Ms.  
19 Brown testified that Appellant was not talking to Amanda in an abusive manner, but rather was  
20 talking loudly to get her to listen because of the headphones and loud music Amanda was playing.

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22 2.12 Ms. Brown further testified that when they asked Amanda to go on timeout, she started to  
23 willingly get up and go with them but then "exploded" and kicked out. Ms. Brown and Ms. Shusko  
24 denied that Appellant ever grabbed at Amanda or jerked her off the bed, and they both testified that  
25 Appellant did not use excessive force during the incident.

1 2.13 Appellant also testified he was required to speak to Amanda in a loud voice because she had  
2 her headphones on with the music blaring. Appellant stated that when he reached for Amanda to  
3 escort her from her bedroom to a timeout room, she kicked at him, striking him in the groin.  
4 Appellant also testified that the day before this incident Amanda was agitated, hostile, sarcastic, and  
5 had threatened to write a complaint against staff.

6  
7 2.14 During her testimony, Ms. Angelo denied that anyone notified her that Amanda had been  
8 assaultive to staff, but rather that Ms. Brown indicated that Amanda was refusing to take her  
9 headphones off as directed. She testified that she heard loud voices coming from Amanda's room,  
10 and she went down the hall and stood at the doorway of Amanda's room to assess what was  
11 happening. Ms. Angelo, who stood approximately 20 feet away from Amanda, could hear the  
12 music coming from the headphones. She testified that she observed Appellant hovering over  
13 Amanda and shouting at her to take her headphones off. Ms. Angelo testified that Amanda was not  
14 disruptive, aggressive or assaultive. On the other hand, she described Appellant's voice as "loud,"  
15 "aggressive," "commanding," and "stern." She further testified she saw Appellant grab Amanda by  
16 the left arm and jerk her out of the bed, and it was at that point that Amanda became combative. As  
17 a result of the struggle, Amanda had to be contained and was taken to the timeout room.

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19 2.15 Amanda testified that Appellant grabbed her headphones, threw them on the floor and broke  
20 them. She also testified that he grabbed her with one hand on her shoulder and one hand on her  
21 shirt and "yanked" her off the bed and "slammed" her down on the floor.

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23 2.16 In determining what occurred, we find the events as described by Appellant, MHT Carolyn  
24 Brown and MHT Shusko more credible. Ms. Shusko and Ms. Brown were inside Amanda's room  
25 when the events occurred, and therefore, were in a better position to view the incident.  
26 Furthermore, we find no motive for Ms. Brown or Ms. Shusko to lie on Appellant's behalf and their

1 statements have been consistent. On the other hand, we find credible evidence to support that  
2 Amanda disliked Appellant, used racial epithets against him and had a motive to lie about the  
3 events. In a sworn statement to the Washington State Patrol, Amanda described Appellant's actions  
4 during the incident as follows:

5           And he literally picked me up by part of my hair and my shoulder and my arm  
6           and just yanked me off the bed and like slammed me down on the floor. I mean,  
7           it was excessive force. Um, I've been contained many a time by staff here. I had  
8           never had staff do that.

9 2.17 Amanda's version of the event is not credible nor is it supported by Ms. Angelo's account of  
10 the incident, who did not describe Appellant as "slamming" Amanda to the floor or picking her up  
11 by the hair.

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13 2.18 We also do not find Ms. Angelo's testimony credible. For example, in Amanda's  
14 Seclusion/Restraint Progress Notes, Ms. Angelo wrote: "[Patient] refused to take headphones off &  
15 ignored staff's redirection. Staff went to take [patient] to [timeout] and [patient] charged at staff,  
16 hitting, kicking & screaming. Multiple staff safely contained [patient] using STAART techniques.  
17 [Patient] placed in 5 [point] restraints ..." This statement contradicts Ms. Angelo's testimony before  
18 us that Amanda became combative when Appellant allegedly "jerked" her off the bed. Also, Policy  
19 8.02 requires that employees "immediately notify the appropriate supervisor ... when they have  
20 reason to believe any client abuse .... has occurred." Further, as the supervisor of the ward, Ms.  
21 Angelo was required by Section IV, subsection C - 4, of this policy, to report any abuse by the end  
22 of the shift. In this case, Ms. Angelo, a supervisor, did not report the alleged abuse of Amanda until  
23 the following day, June 28, which further calls into question the accuracy of her testimony that she  
24 witnessed Appellant act in an abusive manner.

1 2.19 The preponderance of the credible evidence does not support that Appellant's actions during  
2 the incident with Amanda were physically or psychologically abusive.

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4 2.20 Chief Executive Officer Harold Wilson was Appellant's appointing authority. After  
5 learning of the event of June 27, Mr. Wilson believed there was a possible criminal assault against a  
6 patient, and he requested that the Washington State Patrol conduct an investigation. Following  
7 receipt of the WSP report, Mr. Wilson reviewed all the evidence gathered, including Amanda's  
8 statement to the State Patrol. He subsequently met with Appellant to give him an opportunity to  
9 respond to the charges. However, Mr. Wilson was not persuaded by the information Appellant  
10 presented. Mr. Wilson found that Amanda was more credible, and he concluded that Appellant  
11 engaged in patient abuse.

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13 2.21 In determining the level of discipline, Mr. Wilson reviewed the agency's policies,  
14 Appellant's performance history and prior disciplinary action taken against him. Mr. Wilson  
15 concluded that Appellant's mistreatment of Amanda did not uphold the hospital's mission to  
16 provide quality patient care and that termination was the appropriate sanction.

### 17 18 **III. ARGUMENTS OF THE PARTIES**

19 3.1 Respondent argues a preponderance of the evidence proves Appellant verbally and  
20 physically abused Amanda by yelling at her, grabbing her by the left arm and shoulder, and jerking  
21 her from her bed onto the floor. Respondent asserts Appellant used more force than necessary and  
22 failed to treat Amanda in a therapeutic, goal-directed manner and with dignity and respect required  
23 by policy. Respondent argues that Appellant has demonstrated, over a long period of time,  
24 problems with following proper procedures, following directions, and problems with his  
25 interactions with co-workers. Respondent asserts that dismissal is the appropriate sanction because  
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1 Eastern State Hospital takes client abuse very seriously, and has a zero tolerance for abuse of any  
2 kind.

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4 3.2 Appellant denies he psychologically or physically abused Amanda and he asserts there is no  
5 evidence to support the charges. Appellant asserts that speaking in a loud voice to Amanda was  
6 appropriate under the circumstances in order to ensure she could hear his directives. Appellant  
7 asserts that Amanda had a history of making allegations against staff and that she particularly  
8 disliked him, called him “nigger,” and was angry with him because he was in charge of her  
9 medications. Appellant further argues that Ms. Angelo cannot be believed because she altered  
10 reports regarding the incident and told another staff person that they wanted to get Appellant fired.  
11 Appellant argues that his appeal should be granted and he should be fully reinstated.

#### 12 13 **IV. CONCLUSIONS OF LAW**

14 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.  
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16 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
17 the charges upon which the action was initiated by proving by a preponderance of the credible  
18 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
19 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep’t of  
20 Corrections, PAB No. D82-084 (1983).  
21

22 4.3 Respondent has failed to meet its burden of proving by a preponderance of the credible  
23 evidence that Appellant psychologically and physically abused resident Amanda. Therefore, the  
24 appeal of Gerald Griffin should be granted, and he should be fully reinstated.  
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**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Gerald Griffin is granted.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

\_\_\_\_\_  
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

\_\_\_\_\_  
Busse Nutley, Member